

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

STEVEN B. BARGER, an individual

Plaintiff

v.

FIRST DATA CORPORATION et al.

Defendants.

Case No. 1:17-cv-4869-FB-LB

**PLAINTIFF'S OBJECTIONS TO
DEFENDANTS' EXHIBIT LIST**

(Assigned to the Honorable Frederic Block)

PLAINTIFF'S OBJECTIONS TO DEFENDANT'S EXHIBIT LIST

Plaintiff Steven B. Barger, by and through his undersigned counsel, respectfully submits the objections set forth on Exhibit A to Defendants' Exhibit List [ECF No. 102]. Plaintiff reserves the right to amend or modify any of the objections on the basis of any stipulation entered into by the parties; corrections, revisions or other modifications to the underlying exhibits; any order from the Court on outstanding motions; and any ruling from the Court impacting admissibility.

Plaintiff objects to the introduction of exhibits that are not properly authenticated, but are willing to confer with defendants regarding means to resolve any authenticity objections in advance of trial. However, in instances where a stipulation as to authenticity may be reached, and unless otherwise notes, Plaintiff reserves all other objections to admissibility, including, but not limited to objections based on lack of foundation, hearsay and relevance.

Plaintiff objects to the following exhibits on Defendants' Exhibit List because, as of the filing of these objections, Defendants have not provided copies of the exhibits or bates numbers corresponding to document Bates numbers produced in discovery.

D-74	BARGER00291747	Repricing Range
D-103	BARGER00016177	FW: Top 150 List Based on MC Feedback

D-164	BARGER00407494	RE: Updated Comp on RIF List
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The following documents all fall into gaps in Defendant's Bates numbering during production and are not in the Plaintiff's possession. Plaintiff objects to all of these exhibits.

D99 FDC00048829
D105 FDC00048892
D113 FDC00049057
D128 FDC00051658
D144 FDC00052276
D155 FDC00051707
D189 FDC00052295
D191 FDC00052309
D225 FDC00051862
D232 FDC00052298
D235 FDC00051634
D252 FDC00052345*
D275 FDC00052345*

* The Bates numbers of for D252 and D275 are the same, and FDC52345 is not in Defendant's production.

Plaintiff reserves all objections to the above documents until produced. As to the preceding documents, Plaintiff's objections are conditional, pending review of exhibits once they are provided.

With respect to Plaintiff's objections, the list below provides a key to the objections set forth below

CODE	OBJECTION
106	Incomplete; the introduction of any remaining portions ought, in fairness, to be considered contemporaneously (Fed. R. Evid. 106)
402	Relevance (Fed. R. Evid. 402)
403	Misleading; undue prejudice; confusion of issues; waste of time (Fed. R. Evid. 403)
701	Lay opinion or legal conclusion; the exhibit contains an impermissible opinion by a lay witness that is not reasonable based on perception or helpful to a clear understanding of the witness' testimony or to the determination of a fact in dispute

801 and/or 802	Hearsay; the exhibit is a statement made by one other than the witness while testifying at trial, offered into evidence to prove the truth of the matter asserted, and not subject to any hearsay exception (Fed. R. Evid. 801 and 802)
901	Authentication; exhibit has not been properly authenticated (Fed. R. Evid. 901)
1001-1004	Best evidence; the exhibit is objectionable because it is vague and ambiguous as to whether the witness is summarizing his or her own independent understanding of the contents of the document (Fed. R. Evid. 1001-1004)
E	Exhibit is objectionable because it constitutes attempted expert testimony from a person who was not designated an expert (Fed. R. Civ. P. 26)
F	Exhibit lacks foundation
UT	Untimely, exhibit not provided during the discovery process.
Cond.	Conditional objection; Plaintiff reserves the right to object to this exhibit at trial depending on the purpose for which Defendants seek to introduce it.

DATED: September 5, 2019

Respectfully Submitted,
THE LAW OFFICE OF SHAWN SHEARER, P.C.
_____/s/ Shawn Shearer_____
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Steven B. Barger

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via the Court's CM/ECF system
on September __, 2019 on the following:

Gary Eidelman
Michael P. Cianfichi
Gillian Cooper
SAUL EWING ARNSTEIN & LEHR LLP

Louis P. DiLorenzo
BOND, SCHOENECK & KING PLLC

_____/s/ Shawn Shearer_____
Shawn Shearer